	Application No.	Applicant(s)
Office Action Summary	09/690,159	RASHKOVSKIY, OLEG B.
	Examiner	Art Unit
	Ngoc K. Vu	2611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>10 February 2004</u>.

2a)☒ This action is **FINAL.**   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>7-10,17-25 and 28-43</u> is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>7-10,17-25 and 28-43</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

Response to Arguments

1.   Applicant's arguments, see paper No. 19, filed 2/10/04, with respect to the rejection(s)of

claim(s) 7-10, 17-25 and 28-43 under 35 U.S.C 103 (a) as being unpatentable over Levitan et

al. and McGarrahan et al. of the record have been fully considered and are persuasive.

Therefore, the previous Office Action mailed 12/16/03 is hereby vacated. However, upon further

consideration, a new ground(s) of rejection is made in view of Zigmond et al. (US 6,698,020

B1).

Claim Rejections - 35 USC § 102

2.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by
> another filed in the United States before the invention by the applicant for patent or (2) a patent
> granted on an application for patent by another filed in the United States before the invention by the
> applicant for patent, except that an international application filed under the treaty defined in section
> 351(a) shall have the effects for purposes of this subsection of an application filed in the United States
> only if the international application designated the United States and was published under Article 21(2)
> of such treaty in the English language.

3.   Claims 7-10, 17-25 and 28-43 are rejected under 35 U.S.C. 102(e) as being anticipated

by Zigmond et al. (US 6,698,020 B1).

Regarding claim **7**, Zigmond discloses a method comprising:

allowing the use of a content on a content receiver (playing the video programming on a

receiver 56 – see col. 7, lines 16-32); automatically interrupting the use of the content; enabling

the receiver to temporarily replace the content with advertising (the video programming feed is

interrupted and a selected advertisement is displayed – see abstract; col. 7, lines 16-32);

accessing a predetermined rating assigned to one or more characteristics of the content, the

rating based on the degree to which the one or more characteristics is present within content (it

is noted that the receiver must determines an assigned content rating of the video programming, for example, content rating of a violent movie is R or V, content rating of a children program is PG...etc – see col. 11, lines 37-42; col. 12, lines 15-18); and

comparing said rating for the content to a content rating specified by an advertiser (comparing the content rating of the video programming to a content rating of an advertisement which is specified by an advertiser), said content rating specified by said advertiser to indicate a level of said one or more characteristics present in content that is accepted to said advertiser (the content rating of the advertisement specified by the advertiser indicates a level of one or more characteristics present in advertisement, e.g., an advertisement for one product is a R-rated or a PG- rated – see col. 13, lines 55-58).

Regarding claim **8**, Zigmond discloses enabling a variety of content to be selected for play at any time (a viewer can select any video programming or shows at any time – see col. 6, lines 18-22; col. 13, lines 29-32).

Regarding claims **9** and **10**, Zigmond further discloses automatically replacing the content with advertisement at an appropriate time indicated by a trigger event (see col. 8, lines 32-37).

Regarding claim **31**, Zigmond discloses assessing a predetermined rating assigned to one or more characteristics (it is noted that the receiver must determines an assigned content rating of the video programming, for example, content rating of a violent movie is R or V, content rating of a children program is PG...etc – see col. 11, lines 37-42; col. 12, lines 15-18).

Regarding claim **42**, Zigmond discloses that the content receiver to temporarily replace the content with advertising when said rating the content is at an acceptable level as indicated by said content rating specified by said advertiser (the video programming temporarily replace with a selected advertisement by the receiver 56 when the content rating of the advertisement

matches with the content rating of the video program being watched by the viewer – see col. 13, lines 48-58 and col. 17, lines 25-31).

Regarding claim **17**, Zigmond discloses an article comprising a medium for storing instructions that enable a processor-based system to (computer-readable media having computer executable instructions or data filed stored thereon. The computer-executable instructions may include program code means for executing selected steps of – see col. 6, lines 40-67):

allowing the use of a content on a content receiver (playing the video programming on a receiver 56 – see col. 7, lines 16-32); automatically interrupting the use of the content; enabling the receiver to temporarily replace the content with advertising (the video programming feed is interrupted and temporarily replaced with a selected advertisement – see abstract; col. 7, lines 16-32); accessing a predetermined rating assigned to one or more characteristics of the content, the rating based on the degree to which the one or more characteristics is present within content (determining an assigned content rating of the video programming, for example, content rating of a violent movie is R or V, content rating of a children program is PG…etc – see col. 11, lines 37-42; col. 12, lines 15-18); and

comparing said rating for the content to a content rating specified by an advertiser (comparing the content rating of the video programming to a content rating of an advertisement which is specified by an advertiser), said content rating specified by said advertiser to indicate a level of said one or more characteristics present in content that is accepted to said advertiser (the content rating of the advertisement specified by the advertiser indicates a level of one or more characteristics present in advertisement, e.g., an advertisement for one product is a R-rated or a PG- rated – see col. 13, 55-58).

Regarding claim **18**, Zigmond discloses enabling a variety of content to be selected for play at any time (the video programming from multiple content providers or television channels so that a variety of content can be selected to play at any time – see col. 6, lines 18-22; col. 13, lines 29-32).

Regarding claims **19** and **20**, Zigmond further discloses automatically replacing the content with advertisement at an appropriate time indicated by a trigger event (see col. 8, lines 32-37).

Regarding claim **32**, Zigmond discloses assessing a predetermined rating assigned to one or more characteristics (it is noted that the receiver must determines an assigned content rating of the video programming, for example, content rating of a violent movie is R or V, content rating of a children program is PG...etc – see col. 11, lines 37-42; col. 12, lines 15-18).

Regarding claim **43**, Zigmond discloses that the content receiver to temporarily replace the content with advertising when said rating the content is at an acceptable level as indicated by said content rating specified by said advertiser (the video programming temporarily replace with a selected advertisement by the receiver 56 when the content rating of the advertisement matches with the content rating of the video program being watched by the viewer – see col. 13, lines 48-58 and col. 17, lines 25-31).

Regarding claim **21**, Zigmond discloses a system (see figures 3 and 4) comprising: a receiver (56) that receivers the transmission of content (video programming), the receiver including a shell (68 – see figure 4) to enable the use of content to be interrupted and temporarily replaced with advertising (the video programming feed is interrupted and temporarily replaced with a selected advertisement by the video switch 68 – see figure 4; abstract; col. 7, lines 16-32; col. 8, lines 32-37); and

storage (within receiver 56) coupled to the receiver storing instruction (program code –

see col. 6, lines 50-53) that enable the receiver to access a predetermined rating assigned to

one or more characteristics of the content , the rating based on the degree to which the one or

more characteristics is present within content, the rating based on the degree to which the one

or more characteristics is present within content (it is noted that the receiver must determines an

assigned content rating of the video programming, for example, content rating of a violent movie

is R or V, content rating of a children program is PG…etc – see col. 11, lines 37-42; col. 12,

lines 15-18), and comparing said rating for the content to a content rating specified by an

advertiser (comparing the content rating of the video programming to a content rating of an

advertisement which is specified by an advertiser), said content rating specified by said

advertiser to indicate a level of said a level of said one or more characteristics present in

content that is acceptable to the advertiser (the content rating of the advertisement specified by

the advertiser indicates a level of one or more characteristics present in advertisement, e.g., an

advertisement for one product is a R-rated or a PG- rated – see col. 13, lines 55-58).

Regarding claim **22**, Zigmond discloses that the system is a television receiver (see col.

7, lines 50-52).

Regarding claim **24**, Zigmond discloses that the receiver determines the type of content

(for example, the receiver determines whether the video programming feed is watched as it is

broadcast or being replayed from recorded media – see col. 14, lines 1-4).

Regarding claims **23** and **25**, Zigmond discloses that the receiver determines the content

rating/characteristic of the video programming since the ad selection criteria may select specific

advertisements according to a particular program being viewed (see col. 12, lines 49-51; col. 13,

lines 48-58).

Regarding claims **28** and **29**, Zigmond further discloses automatically replacing the content with advertisement at an appropriate time indicated by a trigger event (see col. 8, lines 32-37).

Regarding claim **30**, Zigmond discloses enabling a variety of content to be selected for play at any time (a viewer can select any video programming or shows at any time – see col. 6, lines 18-22; col. 13, lines 29-32).

Regarding claim **33**, Zigmond discloses assessing a predetermined rating assigned to one or more characteristics (it is noted that the receiver must determines an assigned content rating of the video programming, for example, content rating of a violent movie is R or V, content rating of a children program is PG...etc – see col. 11, lines 37-42; col. 12, lines 15-18).

Regarding claim **34**, Zigmond discloses a method comprising:

assigning a rating to content, the rating based on the degree to which a characteristic is present in the content (a rating is assigned to a vide programming based on the degree to which characteristic is present in the video programming, for example, content rating of a violent movie is R or V, content rating of a children program is PG...etc – see col. 11, lines 37-42; col. 12, lines 15-18); and

comparing said assigned rating of content to a content rating required by an advertiser (comparing the content rating of the video programming to a content rating of an advertisement which is specified by an advertiser), said content rating required by said advertiser to indicate an acceptable level of the content characteristic with which an advertisement of said advertiser may be associated (the content rating of the advertisement specified by the advertiser indicates a level of one or more characteristics present in advertisement, e.g., an advertisement for one product is a R-rated or a PG- rated – see col. 13, lines 55-58).

Regarding claims **35**, Zigmond discloses determining whether the assigned rating of said content and said content rating required by said advertiser match (the video programming temporarily replace with a selected advertisement by the receiver 56 when the content rating of the advertisement matches with the content rating of the video program being watched by the viewer – see col. 13, lines 48-58 and col. 17, lines 25-31; col. 12, lines 49-51, 33-37; col. 10, lines 58-61).

Regarding claim **36**, Zigmond discloses that the receiver determines the type of content (for example, the receiver determines whether the video programming feed is watched as it is broadcast or being replayed from recorded media – see col. 14, lines 1-4).

Regarding claim **37**, Zigmond discloses that the video programming is television program. It must be understood that the television program includes the musical content. The receiver determines whether the television program, i.e., musical content, feed is watched as it is broadcast or being replayed from recorded media – see col. 14, lines 1-4; col. 13, lines 29-32).

Regarding claims **38** and **39**, it should be understood that assigning a content rating of video programming is based on the degree to which a potential undesirable characteristic is present in the video programming such as rating restricted "R" or rating violence "V".

Regarding claim **40**, Zigmond discloses automatically interrupting the use of the content to replace the content with advertiser's advertisement when said assigned rating of said content and said content rating required by said advertiser match (automatically interrupting playing the video programming to replace the video programming with a selected advertisement when the content rating of the advertisement matches with the content rating of the video program being watched by the viewer – see col. 13, lines 48-58 and col. 17, lines 25-31; col. 12, lines 49-51, 33-37; col. 10, lines 58-61).

Regarding claim **41**, Zigmond further discloses automatically replacing the content with advertisement at an appropriate time indicated by a trigger event (see col. 8, lines 32-37).

Conclusion

4.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ngoc K. Vu whose telephone number is 703-306-5976. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Faile can be reached on 703-305-4380. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private

PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

NV
March 29, 2004